U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

DATE: DEC 1 1988
CASE NO. 88-INA-441

IN THE MATTER OF

HARRY TANCREDI,
Employer

on behalf of

MICHAELA-SOFIA BACA,
Alien

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;
and Brenner, DeGregorio, Guill, Schoenfeld and Tureck,
Administrative Law Judges

ORDER OF REMAND

On March 16, 1988, Certifying Officer Paul R. Nelson ("CO") issued a Notice of Findings ("NOF") in this case, and set April 20, 1988 as the date by which rebuttal evidence should be mailed. On May 11, 1988, the CO denied certification, finding that the NOF automatically had become final because no rebuttal had been filed.

In response to the final denial of certification, the Employer wrote to the CO on May 19, 1988, in effect requesting reconsideration of the denial. Employer noted that it had responded to the NOF in a timely manner, enclosing a copy of an April 12, 1988 letter to the CO providing additional evidence. The CO appears to have treated Employer's May 19 letter as a request for review by BALCA, and transmitted the file to this Office.

Under the circumstances noted above, it was error for the CO to fail to reconsider his denial of certification. Although 20 C.F.R. Part 656[1] does not specifically confer authority to reconsider determinations or decisions on either Certifying Officers (see §656.25) or BALCA (see §656.27), the power to reconsider is inherent in the power to decide. See Trujillo v. General Electric Co., 621 F.2d 1084, 1086 (10th Cir. 1984), citing Albertson v. FCC, 182 F.2d 397, 399 (D.C. Cir. 1950). It appears that most jurisdictions permit administrative agencies to reconsider decisions except as restricted by statute or regulation. See, e.g., 2 AM. JUR. 2d Administrative Law §525; 73A C.J.S. Public Administrative Law and Procedure §161. Moreover, in Exxon Chemical Company, 87-INA-615 (July 18, 1988) (en banc), BALCA, by granting a motion to

[1] All of the regulations cited in this order are contained in Title 20 of the Code of Federal Regulations.

reconsider, implicitly held that it possesses such authority. We hold that the Certifying Officer has this authority as well. In addition, since CO's have the authority to reconsider their decisions, in any case where a motion for reconsideration of a Final Determination is filed, a ruling shall be issued by the CO stating whether the motion is granted or denied.

This does not mean that the CO must reconsider a denial of certification whenever such a motion is filed. Nor must the CO accept the validity of evidence submitted on reconsideration and change the outcome of the case. But at least where, as here, the motion is grounded in allegations of oversight, omission or inadvertence by the CO which, if credible, would cast doubt upon the correctness of the Final Determination, and the Employer had no previous opportunity to argue its position or present evidence in support of its position,[2] the CO should reconsider his or her decision. Further, as the initial fact-finder in alien labor certification cases, it is the CO's job, not BALCA's, to weigh the evidence in the first instance. Since the evidence regarding the timeliness of its rebuttal submitted by Employer on reconsideration obviously is probative, and BALCA would be required to remand the case to him for initial consideration of it in any event, having the CO evaluate this evidence on reconsideration rather than through a remand following an appeal to BALCA will shorten the certification process by many, many months.

Therefore, we hold that Certifying Officers have the authority to reconsider Final Determinations prior to their becoming final.[3] Further, we find that the CO should have done so in this instance. Accordingly, the CO's denial of certification is vacated, and the case will be remanded for consideration of Employer's evidence regarding the timeliness of its rebuttal to the NOF. Should the CO find Employer's rebuttal to have been timely, then he shall decide the case on the merits.

For the Board:

JEFFREY TURECK
Administrative Law Judge

JT:jb

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[2] Obviously, Employer had no prior opportunity to contend that it filed a timely rebuttal to the NOF.

[3] See §§ 656.25(g)(2)(iv) and 656.26(b)(1)-(2), under which a Final Determination denying certification becomes the final determination of the Secretary if a request for review is not mailed within 35 days.